IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KEILA GARCÍA-COLÓN, **Plaintiff,** v. STATE INSURANCE FUND CORPORATION, **Defendant.**	**CIVIL NO. 21-1211 (RAM)**

MEMORANDUM AND ORDER

RAÚL M. ARIAS-MARXUACH, United States District Judge

Pending before the Court is Plaintiff Keila García-Colón's *Motion in Limine to Exclude Testimony or Reference to Hostile Work Environment Retaliation* ("*Motion*"), (Docket No. 264), and Defendant State Insurance Fund Corporation's response, (Docket No. 267). For the reasons below, the Court **DENIES** Plaintiff's *Motion*.

As Plaintiff recently stated in another motion, "Ms. García's retaliation claims are *exclusively* predicated on the cummulative [sic] effect of defendant's retaliatory acts which constitute a 'materially adverse employment action . . . .'" (Docket No. 258 at 2). "That a series of minor retaliatory actions may, when considered in the aggregate, satisfy the . . . 'adverse action' requirement, is settled law in this Circuit." Alvarado v. Donahoe, 687 F.3d 453, 458-59 (1st Cir. 2012) (citing Noviello v. City of Boston, 398 F.3d 76, 91 (1st Cir. 2005)). This type of adverse action is called a "hostile work environment." *See* Billings v.

Town of Grafton, 515 F.3d 39, 54 n.13 (1st Cir. 2008) ("Of course, retaliatory actions that are not materially adverse when considered individually may collectively amount to a retaliatory hostile work environment."); Slater v. Town of Exeter, 2009 WL 737112, at *10 n.16 (D.N.H. 2009).

The "hostile work environment" theory has been applied to retaliation claims repeatedly since Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53 (2006), both within and without the First Circuit. *See, e.g.*, Alvarado, 687 F.3d at 461; Votolato v. Verizon New Eng., Inc., 2018 WL 4696743, at *6-8 (D. Mass. 2018); Laurent-Workman v. Wormuth, 54 F.4th 201, 218 (4th Cir. 2022). Under this theory, "even a string of trivial annoyances will not suffice to make an adverse action showing: 'the alleged harassment must be "severe or pervasive."'" Alvarado, 687 F.3d at 461. Further, "any abuse must be both objectively offensive (as viewed from a reasonable person's perspective) and subjectively so (as perceived by the plaintiff)." Id. Thus, Plaintiff is incorrect that there is a more lenient standard under Burlington that she may use to prove the existence of an adverse employment action.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 30th day of April 2024.

s/Raúl M. Arias-Marxuach
UNITED STATES DISTRICT JUDGE